

# **Exhibit 5**

## **Declaration of Michael Harrington**

1. My name is Michael Anthony Harrington. I am 40 years old.
2. I am incarcerated at the Federal Medical Center (“FMC”) within FCC Butner, specifically in Unit D on the fourth floor. My Bureau of Prisons Register Number is 62416-380.
3. I currently have 2 years and 3 months remaining on a 96-month sentence for unlawful firearm possession by a person convicted of a felony.
4. I have Stage IV colorectal cancer that has spread to my liver. My doctors have told me I have 13 months to live. I was diagnosed with cancer in August of 2019. Currently, I am receiving treatment in the form of chemotherapy and radiation. I will receive a PET scan soon to determine whether I require additional chemotherapy and radiation or whether I need surgery.
5. I also have heart failure, which was diagnosed in January of 2018 when I had to have a triple bypass surgery, and one year ago I had surgery to have a stent placed in my heart. I soon may require a pacemaker, because I have been waking up with tremors. I take a blood thinner in order to help manage my heart condition.
6. I was diagnosed with diabetes around 2015. I take insulin as well as pills for my diabetes.
7. I also suffer from high blood pressure and high cholesterol, for which I have to take medication.
8. The treatment for my medical conditions, specifically the chemotherapy and radiation, make me feel very sick, and make it hard for me to move around. I have a special pillow that helps me to sit up, and following radiation I use a wheelchair to help me get around.

9. I was assigned to the FMC at FCC Butner in October of 2019 because of my medical needs. The FMC houses people who have serious medical conditions that need intense treatment.

10. I currently reside on the fourth floor of the FMC, which houses people who suffer from cancer. A few people on this floor use oxygen tanks or other breathing assistance. Between 10 and 20 people use wheelchairs. I am one of the youngest people on this floor, at age 40. I would estimate that 60-75% of the people on this floor are older than 65.

11. The fourth floor is divided into 4 units. I reside in Unit D, which houses, at most, roughly 60 people. My unit is divided into cells that are about 12 feet by 12 feet. Most cells are shared by two people, but a few cells house only one person. Each cell has two single beds, a shower, a sink, and a toilet.

12. While at the FMC, I have shared a cell with one other person. Due to the size of the cells and the arrangement of our beds, I cannot stay six feet away from my cellmate while inside. I sleep within four feet of my cellmate.

13. There are eight phones available for my entire floor, two per unit. I understand that someone is designated to clean the phone after each use.

14. Since about mid-March, my unit has been in lockdown and we have been confined to our cells for essentially 24 hours a day. We are only allowed to leave our cells for medical treatment that requires us to leave our cells, such as chemotherapy, or to make phone calls. We have not had access to common areas such as the TV or computer rooms during this time.

15. Prison officials have said that my floor is covered with coronavirus and that is why they have us locked in our cells.

16. The only guidance the people in my unit have received from prison officials about prevention of coronavirus is to keep ourselves and our living environment clean, to wear masks, and to stay six feet away from people.

17. I understand that there is additional guidance on the bulletin boards, but do not have access to these materials because of the lockdown.

18. We have not been given any extra supplies for cleaning our cells.

19. The people on my unit do not have access to sterile gloves. I have been given 3 cloth masks, which I have been told I am responsible for cleaning myself.

20. During the lockdown, we receive all of our meals in our cells. We receive two bagged meals and one hot meal each day.

21. While we used to go to a nurse's window for sick call, since lockdown began, a nurse comes around my unit with a sign-up sheet for sick call each weekday, except for Wednesdays. To take advantage of sick call for anything other my serious health issues, such as my chronic pain, it costs \$2.

22. While we have been in lockdown, we have been given roughly a month's supply of medication instead of going through the pill line several times a day.

23. At the last pill call that I can recall before lockdown, I overheard a correctional officer telling the man in the cell next to me that he was going to be quarantined because his cellmate had tested positive for the coronavirus and passed away.

24. A few days prior to that, I recall speaking to the man from the cell next to me who I later found out had tested positive, and I recall him being taken out to the hospital. This was very concerning to me because the cells in my unit have shared vents through which we can communicate and hear each other coughing.

25. In mid-April I was moved to a new cell and got a new cellmate.
26. On or about April 29, 2020, I was tested for the coronavirus because I reported that I could not breathe and was experiencing heart pain. This test came back negative.
27. Since I was tested for coronavirus, my cellmate and I have our temperatures taken three times a day. My cellmate has not been tested for the coronavirus.
28. I have not heard of anyone being released due to the risk of coronavirus.
29. I sent a letter to Warden Scarantino requesting compassionate release in light of my cancer diagnosis in November of 2019. Although the Warden recommended my release to the BOP general counsel, general counsel overrode that recommendation to deny my request in late January of 2020.
30. On March 23, 2020, I filed a Motion to Reduce Sentence with the United States District Court for the Western District of Texas, seeking compassionate release due to the seriousness of my medical conditions and noting the danger of coronavirus. The United States has filed a response opposing this Motion. I am still waiting for the judge's decision.
31. I know that I do not have much time left, and I want to spend the remainder of my time at home with my family. I am fearful that, if I remain at FMC Butner, my time will be cut even shorter by the coronavirus and I will never see my family again.
32. If I am released to home confinement, I can live with my mother and stepfather in Kentucky. I would be able to self-isolate for 14 days, and I would have access to the medical care that I need.

I, Jaclyn Maffetore, certify that I reviewed the information contained in this declaration with Mr. Harrington by telephone on May 21, 2020, and that he certified under penalty of perjury that the information contained in this declaration was true and correct to the best of his knowledge.

/s/ Jaclyn Maffetore

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